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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 454.

JAY B. PHELPS,

Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK AND STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY,

Appellees.

No. 455.

LUCY ASKAM, *et al.*,

Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK AND STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY,

Appellees.

APPEALS FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

BRIEF FOR APPELLEE, BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK.

REINHOLD HEKELER,
Attorney for Appellee.

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APPEALS FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

BRIEF FOR APPELLEE, BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK.

Opinions Below.

The opinion of the New Jersey Supreme Court in both cases is officially reported in 115 N. J. L. 310 (R. 24). The *per curiam* opinions of affirmance in the New Jersey Court

of Errors and Appeals in *Phelps* vs. *Board of Education of the Town of West New York, et al.* (No. 454), is officially reported in 116 N. J. L. 412 (R. 31) and in *Askam* vs. *Board of Education of the Town of West New York* (No. 455), is officially reported in 116 N. J. L. 416 (R. 72).

Statutes Involved.

The Statutes involved are set forth in the Appendix, *infra,* pages 20-27.

Questions Presented.

1. Whether the Teachers Tenure Act—being Chapter 243 of the New Jersey Public Laws of 1909—providing that no principal or teacher shall be subjected to reduction of salary except for the causes and in the manner set forth in the statute, constitutes a legislative contract between the State and the Teachers, and confers irrevocably vested contractual rights on the appellant teachers.

2. Whether Chapter 12 of the New Jersey Public Laws of 1933 is violative of and repugnant to, the contract clause of the Federal Constitution and the Due Process and Equal Protection Clauses of the Fourteenth Amendment thereto, because it impairs the obligations of the legislative contract alleged to have been created by the Teachers Tenure Law of 1909, in that the 1933 Law partially repeals the provisions of the Tenure Law and permits a reduction in teachers' salaries.

3. Whether the 1933 Act is a proper exercise of the essential reserved power of the state, during the period of an emergent economic crisis.

Statement.

The appellants' statement of fact is substantially correct, but we desire to supplement the same by pointing out that the state law under attack on this appeal—Chapter 12 of the New Jersey Public Laws of 1933—was approved on February 4, 1933.

The resolution (R. 4) reducing appellants' salaries from ten to fifteen percent was adopted by the appellee on June 23, 1933, to become effective during the new fiscal school year July 1, 1933-July 1, 1934. The reductions in salary became effective for the school year next following the date of the adoption of the resolution. As a practical matter and due to the intervening summer vacation, the appellants were not affected until school opened on September 1, 1933.

It is true that the appellant, Phelps, in No. 454, refused to accept the reduced salary when offered (R. 20).

However, the ninety-four appellants in the *Askam* Case (No. 455) raised no objection or made no protest whatever until December 1933, when, without any prior notice to appellee, they appealed to the State Commissioner of Education (R. 37). In the interim, they cashed their pay checks and continued to do so during the entire school year 1933-1934. The appellants in both cases had knowledge or must be presumed to have had knowledge, of the Act of 1933 adopted in February of that year, and indubitably had knowledge of the adoption by the local school board on June 23, 1933 of the resolution reducing salaries. None of the appellants nor anyone else objected to the adoption of the resolution, although the school budget for the year 1933-1934 had been previously made up and given the widest publicity.

It may not be amiss to mention at this point that the matters in controversy on these appeals are now probably moot, and call for a declaration and opinion of this court on abstract questions of law. The resolution of June 23, 1933 upon which the appellants center their attack fixed July 1, 1933 July 1, 1934 as the effective period and this has expired by limitation of time.

The record in the instant case presents for decision the constitutional validity of this particular resolution and no other. Hence, in effect, the appellants pray this court to give its advisory opinion as to the validity of a resolution *which is no longer operative.*

Appellee's Motion to Dismiss or Affirm.

The appellee, Board of Education of the Town of West New York, has filed a statement in the cause, opposing jurisdiction and moving to dismiss and in the alternative, to affirm, which resulted in an Order on November 9th last, noting probable jurisdiction and providing that

> "further consideration of the motion to dismiss or affirm is postponed to the hearing of the case on the merits."

Summary of Argument.

1. Chapter 12 of the New Jersey Public Laws of 1933, is not repugnant to the Constitution of the United States.

2. Chapter 12 of the New Jersey Public Laws of 1933, is proper emergency legislation, and within the reserved power of the State.

ARGUMENT.

I.

Chapter 12 of the New Jersey Public Laws of 1933, is not repugnant to the Constitution of the United States.

The appellants' argument is predicated on a fundamental misconception of the effect of the Teachers Tenure Act of 1909. This statute, the appellants urge, created in their favor, irrevocably vested contractual obligations which the Legislature was powerless to repeal, change or modify; that the force and effect to be given the Tenure Act is, that a legislative contract was created, inhibiting the state from future modification or repeal.

In short, the appellants argue that by virtue of the Tenure Law, the state of New Jersey surrendered its sovereign power for all time.

When the Teachers Tenure Act is viewed in the light of the positive mandate of the State Constitution to provide for the maintenance and support of a thorough and efficient system of Free Public Schools, and in the light of the fact that the Local Board of Education was performing a governmental function as an arm or subdivision of

the state, appellants' erroneous concept of the statute will become manifest. (Appendix, P. 20.)

The Teachers Tenure Act of 1909 was held by the New Jersey Court, in its opinion, to have been repealed in part by the 1933 Law referring to the fixing of salaries. The New Jersey Court construed the 1909 Act *not* as conferring irrevocably contractual vested rights on the appellant school teachers, but on the contrary that the statute established "a legislative status for teachers", and that the status of tenure teachers is

> "In essence dependent on a statute * * * which the legislature at will may abolish, or whose emoluments it may change."

That the 1933 Act constitutes "an implied partial repealer or amendment to the Tenure Act of 1909" and is not repugnant to the provisions of the Constitution of the State of New Jersey, inhibiting the impairment of obligations of contract. (R. 24.) The foregoing is the *ratio decidendi* of the State Court's decision.

This rational interpretation by the State Court, as to the meaning and effect to be attributed to the Tenure Act of 1909 and its elucidation of the status of the appellant teachers, will not only be accepted as binding on this Court, but also makes crystal clear that the 1909 Act did not create a *contract* between the teachers and the state, and hence, there could be no constitutional impairment by the subsequent legislation of 1933, because no *contract* in law or fact had ever existed between the state and the teachers.

In 6 Ruling Case Law, Section 337, it is stated that:

> "In determining whether a statute affecting a municipal corporation operates as an impairment of

> the obligation of a contract, regard must be had to the distinction between the rights of such a corporation in its public or governmental capacity and its private rights. So far as a municipality is an agency of government, it has no rights or powers which, as between it and the state, the legislature may not modify or abrogate at pleasure."

In *Newton* v. *Commissioners*, 100 U. S. 548, by an Act of the Legislature of Ohio, passed February 16, 1846, it was provided that, upon the fulfillment of certain terms and conditions by the proprietors or citizens of the town of Canfield, in Mahoning County, the County Seat should be "permanently established" at that town. Those terms and conditions having been complied with, the county seat was established accordingly. The terms were that the citizens must give a bond for $5,000.00 and donate a lot of ground on which to erect public buildings. On April 9, 1874, the Legislature passed an Act providing for the removal of the county seat to Youngstown. The citizens of Canfield claimed the latter act impaired the obligation of a contract. This contention was held untenable.

Mr. Justice Swayne said, in part:

> "The Dartmouth College Case was the pioneer in this field of our jurisprudence.
>
> "The principle there laid down, and since maintained in the cases which have followed and been controlled by it, has no application where the statute in question is a *public law* relating to a *public subject* within the domain of the general legislative power of the state, and involving the *public rights* and *public welfare* of the entire community affected by it.
>
> * * * * * *

The two classes of cases are separated by a broad line of demarcation. The distinction was forced upon the attention of the court by the argument in the Dartmouth College Case

* * * * * *

"It is hardly possible to conceive the grounds on which a different result could be vindicated, without destroying all legislative sovereignty, and checking most legislative improvements and amendments, as well as supervision over its subordinate public bodies.

"But cases vitally involve public interests, and legislative acts concerning them are necessarily *public laws*. Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. * * * It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil."

Gratuities, bounties, and pensions created by statute may be withdrawn at any time.

U. S. vs. Teller, 107 U. S. 64;
Fowler vs. U. S., 157 U. S. 160;
U. S. vs. Cook, 257 U. S. 523.

The Teachers Tenure Act of 1909 as we perceive it, was an encouragement held out to teachers indiscriminately and a mere *personal* right or privilege which the teachers could neither assign nor transfer and which the Legislature could withdraw entirely or in part, as it pleased.

The Legislature has the right to hold out by its statutes, encouragements to engage in certain trades or occupations and the Legislature has the right to change such form of encouragement.

In the case of *Salt Co.* vs. *East Saginaw*, 80 U. S. 611, the Court said:

> "General encouragements held out to all persons indiscriminately to engage in a particular trade or manufacture, whether such encouragement be in the shape of bounties or drawbacks or other advantages, are always under the legislative control and may be discontinued at any time."
>
> *Grand Lodge* vs. *New Orleans*, 166 U. S. 143;
> *The Rector of Christ Church* vs. *Philadelphia*, 65 U. S. 241;
> *Welch* vs. *Cook*, 97 U. S. 541.

It was a law dictated for public policy, but there was no pledge that it should not be repealed at any time. It (the Act) was addressed to no one in particular and constituted a mere announcement of policy not constituting a contract, etc.

Ettor vs. *Tacoma*, 228 U. S. 155.

The Constitution of the State of New Jersey provides for a perpetual fund for the support of free schools and contains an unequivocal command directed to the Legislature, to provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children of the state between the ages of five and eighteen years. (Appendix, P. 24.)

The state constitution also provides *inter alia*, "that the Legislature shall not pass private, local or special laws providing for the management and support of free public schools:"; that the Legislature shall pass general laws in this class of cases and for all other cases which in its judgment may be provided for by general laws.

Pursuant to the directions of the State Constitution, the Legislature adopted "An Act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof", approved October 19, 1903. The tenure Act of 1909 is a supplement to this Act of 1903.

The tenure law of 1909 is analogous to the encouragement offered to engage in certain trades or occupations as in *Salt Co.* vs. *East Saginaw*, *supra*, and was enacted by the Legislature, in the exercise of a governmental function, and in the performance of its public duty, to maintain a system of free education. The Legislature thus proclaimed the public policy of the state, and is at liberty in the exercise of its sovereign powers, to repeal, modify or amend the Tenure Law of 1909, or, under the pressure of an urgent necessity, announce a new public policy, as it did by the 1933 Act.

The cases relied on by the appellants, relating to tenure rights, clearly involve unwarranted acts of the school boards while a tenure Act was in full force and effect *without amendment or modification*, or involve cases where teachers had made contributions to a pension or retirement fund and therefore, had acquired certain vested property rights in such fund, which obviously could not be diminished or disturbed to the prejudice of the contributors by subsequent legislation. None of these cases are in point and

fall far short of supporting the appellants' position. In none of these cases was the issue one which questions the right of the state to repeal, amend or modify its own laws. None of these cases have any relevancy to a situation where the State as the sovereign power, modifies its own law—the Tenure Act—to affect salaries to accrue in the future—beginning with and during a new and subsequent school year.

The action of the New Jersey Legislature in modifying the 1909 Tenure Act for a limited period of one year did not impinge upon any of the alleged rights of the appellants.

> "There can be no vested right in an existing law which precludes its change or repeal" 12 C. J. 958.
>
> "The term 'VESTED RIGHTS' relates to property rights only and does not apply to personal rights" 12 C. J. 956.

Judge Cooley, in his work on Constitutional Limitations (7th Ed.) page 402, states that citizens have no vested right in the existing general laws of the state which can preclude their amendment or repeal, and that there is no implied promise on the part of the state to protect its citizens against incidental injury occasioned by the changes in the law.

See

People ex rel. Cunningham, et al. vs. *Roper, et al.*, 35 N. Y. 629;

People ex rel. Davies vs. *Commissioners of Taxes*, 47 N. Y. 501;

Rector, etc. of Christ Church of Philadelphia vs. *County of Philadelphia, supra.*

The essential elements of a true contract are wanting. There is neither mutuality of obligation nor a recital. The obligation is one sided; while the state is bound the teachers are at liberty to act as they please. There is no valuable consideration to bind the bargain.

As this Court said in [illegible]

> The most vexatious problem of construction here has been: What is a contract? What are the obligations of a contract? What constitutes impairment of those obligations?

It is true that the relationship between a teacher and a board of education remains contractual after the third year, but the contract is an annual one which is deemed to be renewed each year so long as the so-called Tenure Act remains on the books and effect. The fact that in the past appellee had received salary increases to certain teachers annually bears out our contention that a new contract was entered into annually. The original employment for the first three years was by virtue of a written contract executed for each school year, and arrived at by the usual conventional methods. After the third year the contract was no longer reduced to writing but extended by virtue of the statute, from year to year. *The State [illegible] and hence the State can modify [illegible]*

If there is any doubt or ambiguity as to the legislative intent the conclusion must be resolved in favor of the public.

Charles River Bridge vs. *Warren Bridge*, 11 Pet. 420;

Knoxville Water Co. v. *Knoxville*, 200 U. S. 22.

In the instant case these appellants did nothing other than to accept another year's employment at the hands of the local Board of Education for which they were paid. All of them except Phelps accepted such employment at the reduced salaries without protest or objection.

II

Chapter 12 of the New Jersey Public Laws of 1933, is proper emergency legislation, and within the reserved power of the State.

If the appellants' contentions are tenable and if it be assumed that acquired vested contractual rights under the Penny Act of 1909, which the State was powerless to modify or repeal, still the 1933 Statute constitutes proper emergency legislation and is a constitutional exercise of the essential reserved power of the state.

The preamble to the 1933 Statute proclaims the existence of an emergency in *every* school district of the state and empowers the local school boards to fix the amount of the salaries to be paid to the school teachers during the limited period. The Act is effective for one year between the first day of July 1933 and the first day of July 1934.

It is well settled that the obligations of contracts must yield to the exercise of the police power reserved to the states.

Home Building & Loan Assn. vs. Blaisdell, 290 U. S. 398.

Vested rights cannot inhibit the proper exertion of this power.

Village of Nyack, 201 U. S. 500.

In *Mugler vs. Kansas*, 123 U. S. 473, the Court said, at page 480:

> "It is the settled law of this court that the introduction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are, where parties enter into contracts, perfectly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the state, prohibiting the establishment or continuance of such traffic: in other words, that parties by entering into contracts may not estop the legislature from enacting laws intended for the public good."

Chapter 12 of the Laws of 1933 was clearly enacted for the Public Good: the lessening of the tax burden on the people of the State of New Jersey during a time of great crisis.

This Court said, in *Home Building & Loan Assn.* vs. *Blaisdell*, *supra*, at page 435:

"The reservation of this necessary authority of the state is deemed to be a part of the contract. In the case last cited, the Court answered the forcible challenge of the state's power by the following statement of the controlling principle, a statement reiterated by this court speaking through Mr. Justice Brewer, nearly fifty years later, in Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 'But into all contracts, whether made between states and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, of nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount wherever a necessity for their execution shall occur.' * * * The economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts. * * *

"Another agreement, which comes more closely to the point, is that the state power may be addressed directly to the prevention of the enforcement of contracts only when these are of a sort which the legislature in its discretion may denounce as being in themselves hostile to public morals, or public health, safety or welfare, or where the prohibition is merely of injurious practices; that interference with the enforcement of other and valid contracts according to appropriate legal procedure, although the interference is temporary and for a public purpose, is not permissible. This is but to contend that in the

latter case the end is not legitimate in the view that it cannot be reconciled with a fair interpretation of the constitutional provision. * * *

"And if state power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earthquake, that power cannot be said to be non existent when the urgent public need demanding such relief is produced by other and economic causes."

This Honorable Court will take judicial notice of the economic crisis facing the people of the State of New Jersey and the unrest which prevailed everywhere in that State as well as throughout the entire Nation. The New Jersey courts have recognized the existence of the emergency.

Vanderbilt vs. *Brunton Piano Co.*, 111 N. J. L. 396;

Hourigan vs. *North Bergen*, 113 N. J. L. 143.

Especially it is true that in 1933, the Town of West New York and most of the other municipalities throughout the country, were in serious financial difficulties, and far in arrears in the payment not only of the teachers' salaries, but also the salaries of all other local employees. The salaries of *all* employees of the Town of West New York were reduced in 1933, and the reductions are still in force and effect. The taxpayers were not paying their taxes, for obvious reasons—they were unable, financially, to do so. Additional crushing financial burdens were laid on the town by the necessity of appropriating money for relief purposes. Additional burdens were thus placed upon the town, although the revenues were declining. The situation would

have become intolerable if the municipality were powerless to protect itself for a limited period of time by pursuing a policy of drastic retrenchment.

The appellants in the case at bar have not lost their positions and rights under the Tenure Act its application as to salaries only has been modified and that only for a limited time otherwise it is still in full force and effect.

The 1933 Act was emergency legislation of mild character and by its very terms, scrupulously preserved the teachers' rights in the Pension and Annuity Fund of the State of New Jersey, or any employee's pension fund and provides for a minimum salary of $70.00 per month. The resolution (R. 4) fixes a minimum salary of $1,200.00 per annum for elementary school teachers and $1,600.00 per annum for high school teachers. The reductions of ten to fifteen percent were extremely moderate, under the circumstances.

It was not only the appellants and the Board of Education that were affected by the resolution in question. Every property owner in West New York was affected thereby since the reductions in salaries eased the tax burden on property owners.

We might say in passing that municipalities throughout the entire State of New Jersey have relied upon the validity of the 1933 Law, temporarily reducing the school teachers' salaries. If the 1933 Act should be held invalid, the Town of West New York will be required to raise another budget — a sum in excess of $200,000.00—in order to restore the pay-cuts to the teachers. Such a result would be catastrophic. Undoubtedly, a similar situation would arise in many of the other municipalities and states of our Nation, in which school teachers are governed by Tenure Acts,

leading to increased budgets running into millions of dollars, with destructive consequences.

From the foregoing it is quite clear that the 1933 Statute under revieiw meets the criteria laid down in the *Blaisdell* case, and it is manifest that:

1. An emergency existed, the like of which had never been experienced before.

2. The legislation was for the protection of a basic interest of society, in that it made it possible for the harassed people of New Jersey to find relief, in a measure at least, from exorbitantly high taxes.

3. The relief was of a character appropriate to the emergency and the conditions were reasonable. This is self-evident and needs no elaboration.

4. The conditions in the particular case were reasonable. The salary reductions were not unreasonable and gave appellants no greater financial loss than was experienced by workers in commercial lines and by businessmen generally. The latter would have been pleased had their losses been limited to the percentages of these salary reductions. This is too well known to require proof.

5. The legislation is temporary. A definite expiration date is set in the statute.

Conclusion.

A vast field of speculative thought is suggested by the broad implications inherent in appellants' thesis. Future statutory action may well become a snare for the unwary legislators and lead to manifold assertions of permanent loss of the sovereign power of legislation to the detriment

of the public interest. By a process of rationalization and *a priori* reasoning, the impelling necessities of an ever changing social and economic order would be hampered and perhaps in large measure constructive relief rendered impotent.

To achieve such surrender of the sovereign prerogative to legislate on the ills of the body politic, the grant should be buttressed by clear, convincing and unequivocal proofs.

It is respectfully submitted that the judgments of the New Jersey Court of Errors and Appeals should be affirmed.

January, 1937.

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Appendix.

Chapter 243 of the New Jersey Laws of 1909, (P. L. 1909, p. 398; 4 N. J. Comp. St. pp. 4763 and 4764, Secs. 106a, 106b and 106c).

A Supplement to an act entitled "An act to establish a thorough and efficient system of free public schools and to provide for the maintenance, management and support thereof," approved October nineteenth, one thousand nine hundred and three.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The service of all teachers, principals, supervising principals of the public schools in any school district of this State shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; PROVIDED, that the time any teacher, principal, supervising principal has taught in the district in which he or she is employed at the time this act shall go into effect, shall be counted in determining such period of employment. No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the Board of Education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of said school board or not.

2. Said Board of Education shall have power to issue writs of subpoena on behalf of either party to compel

attendance of witnesses to testify before said board in the matter under investigation, which subpoena shall be issued under the seal of said board and be signed by the secretary or clerk thereof, and shall be served in the same manner as subpoenas issued out of the Courts of Common Pleas of this State, and every person who refuses or neglects to obey the command of such a writ, or, who, after appearing, refuses to be sworn and testify, shall in either event be liable to a penalty of fifty dollars, to be sued for in the name of said board in any court of competent jurisdiction, which penalty when collected shall be paid to the treasurer or custodian of moneys of said board. Any member of said board is hereby authorized to administer oaths to such witnesses as may appear or be brought before it, and any person who shall have been so sworn and who shall testify falsely, shall be guilty of perjury.

3. Nothing herein contained shall be held to limit the right of any school board to reduce the number of principals or teachers employed in any school district when such reduction shall be due to a natural diminution of the number of pupils in said school district; AND, PROVIDED FURTHER, that the service of any principal or teacher may be terminated without charge or trial who is not the holder of a proper teacher's certificate in full force and effect.

4. This act shall take effect September first, one thousand nine hundred and nine.

Approved April 21, 1909.

Chapter 12 of the New Jersey Laws of 1933, (P. L. 1933, p. 24).

AN ACT respecting the salaries or compensation of officers and employees of and persons holding positions in the several school districts of this State.

WHEREAS, due to present economic conditions, an emergency exists which requires that the board of education of every school district in this State be enabled to fix and determine, by resolution, the amount of salary or compensation, to be paid to officers and employees of and persons holding positions in any such school district; therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The board of education of every school district in this State shall have full authority, by resolution, to fix and determine the salaries and compensation to be paid to officers and employees of and persons holding positions in any such school district, between the first day of July, one thousand nine hundred and thirty-three, and the first day of July, one thousand nine hundred and thirty-four, notwithstanding any such person be under tenure or not; PROVIDED, HOWEVER, that no salary or compensation of any officer or employee of or person holding a position in any school district shall be increased between the first day of July, one thousand nine hundred and thirty-three, and the first day of July, one thousand nine hundred and thirty-four; AND PROVIDED, FURTHER, that if any such person be a member of the Teachers' Pension and Annuity Fund of the State of New Jersey, or any employees' pension fund, such person may continue to pay, or cause to be paid, into such pension fund the same amount as if such salary or compensation had not been changed, and upon the death or retirement of such member, he or his beneficiary shall be

entitled to the same benefits as if his salary or compensation had not been changed; and PROVIDED, FURTHER, that in fixing salaries or compensation there shall be no discrimination among or between individuals in the same class of service; PROVIDED, HOWEVER, that the existing minimum salary of teachers of seventy dollars per month shall not be changed.

2. Nothing in this act contained shall be construed to affect or impair the continuity of position or employment under any tenure of office statute.

3. This act shall take effect immediately.

Approved February 4, 1933.

Extracts From the Constitution of the State of New Jersey.

ARTICLE IV.

Section VII.

6. Educational Fund; Custody and Distribution of; Free Public Schools. The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital; shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever. The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years.

11. Certain Private, Local or Special Laws Not to be Passed. The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say: * * *.

Providing for the management and support of free public schools.

The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

Extracts From New Jersey School Laws. (Approved October 19, 1903) 4 New Jersey Compiled Statutes, Commencing on Page 4718.

SECTION 84. Each board of education elected as provided in this article shall be a body corporate, and shall be known as and called "the Board of Education of the (township, town or borough, as the case may be) of ..... in the county of ....." The title to school property, real and personal, previously acquired by a school district acting under the provisions of this article, or by any school district, board of education, school trustees or other body heretofore having charge and control of the public schools situate in the territory now contained in such school district, or in any part thereof, and the title to all lands, buildings and other property hereafter acquired for school purposes in said school district shall vest in the board of education incorporated under the provisions of this section.

SECTION 86. The Board of Education shall have power:

I. To appoint a person to fill a vacancy in the Board of Education, except a vacancy caused by a failure to elect, but the person so appointed shall serve only until the next election for members of the Board of Education.

II. To employ and dismiss principals, teachers, janitors, mechanics and laborers, and to fix, alter and order paid their salaries and compensation.

III. To make, amend and repeal rules, regulations and by-laws, not inconsistent with this act or with the rules and regulations of the State Board of Education, for its own government, for the transaction of business, and for the government and management of the public schools and the public school property in said district, and also for the employment and discharge of principals and teachers.

IV. To purchase, sell and improve school grounds; to erect, lease, enlarge, improve, repair or furnish school buildings, and to borrow money therefor with or without mortgage; provided, that for any such act it shall have the previous authority of a vote of the legal voters of the district.

V. To take and condemn land and other property for school purposes in the manner provided by law regulating the ascertainment and payment of compensation for property condemned and taken for public use. If either party shall feel aggrieved by any proceedings and award thereunder, said party may appeal in the manner provided by law for appeals from such proceedings and award; provided, that before beginning any proceedings for taking and condemning land and other property, the Board of Education shall have the authority of a vote of the legal voters of the district.

VI. To insure school buildings, furniture and other school property, and to receive, lease and hold in trust for the district any and all real or personal property for the benefit of the schools thereof.

VII. To enforce the rules and regulations prescribed by the State Board of Education, select the textbooks, and, in connection with the County Superintendent of Schools, to prescribe the course of study to be pursued in the school or schools under its charge.

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SECTION 94. A board of education may, in its corporate capacity, sue and be sued, complain and defend in any court of law and equity, and employ counsel therefor, and the amount of the expense incurred by said board in conducting or defending any such suit shall be certified to the assessor by the president and district clerk of such board, and said amount shall be assessed and collected in the next annual tax levy.

SECTION 166. The Governor, the Attorney General, the Secretary of State, the State Comptroller and the State Treasurer are hereby constituted a Board of Trustees of the Fund for the Support of Public Schools arising from appropriations heretofore made or which may be hereafter made by law, or which may arise from gift, grant, bequest or devise, which board shall be known as "The Trustees for the Support of Public Schools."

SECTION 6. The Commissioner of Education shall be one of the Trustees of the School Fund.